

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 IO-13 ADP-00 NEA-10 SSO-00 NSCE-00

USIE-00 INRE-00 SY-10 USSS-00 EB-11 DOTE-00 FAA-00

CAB-09 JUSE-00 COME-00 AID-20 TRSE-00 OMB-01 SCA-01

M-03 CIAE-00 DODE-00 PM-07 H-03 INR-10 NSAE-00 NSC-10

PA-03 RSC-01 PRS-01 SS-15 AF-10 ARA-16 EA-11 ACDA-19

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FM AMEMBASSY BRUSSELS

TO SECSTATE WASHDC IMMEDIATE 8284

INFO USMISSION USUN NEW YORK IMMEDIATE

AMEMBASSY HELSINKI IMMEDIATE

C O N F I D E N T I A L BRUSSELS 4362

HELSINKI FOR AMBASSADOR SCHAUFLE

E.O. 11652: GDS

TAGS: PFOR, PINS, UN, BE

SUBJECT: BELGIAN PROPOSAL ON TAKING OF HOSTAGES

REF: BRUSSELS 4173, 4183, 4239; USUN 2666

THERE FOLLOWS AN EMBASSY TRANSLATION OF THE TEXT OF THE BELGIAN
PAPER RECEIVED FROM FOREIGN OFFICE ENTITLED "EXPOSE DES MOTIFS
POUR UNE CONVENTION SUR LA PRISE D'OTAGES":
BEGIN TEXT

1. IT IS UNDENIABLE THAT THE WAVE OF VIOLENCE WHICH HAS BEEN
BREAKING ON THE WORLD FOR SOME YEARS PREOCCUPIES THE INTERNATIONAL
COMMUNITY MORE AND MORE. THEREFORE, THESE ACTS SHOULD HOLD
THE ATTENTION OF THE WORLD COMMUNITY NOT ONLY BECAUSE ON THE
INTERNATIONAL SCALE THEY PLACE IN DANGER THE JURIDICAL AND SOCIAL
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ORDER THAT IS INDISPENSABLE IF THE VITAL INTERESTS OF INDIVIDUALS
AND THE COMMUNITY ARE TO BE RESPECTED, BUT ALSO BECAUSE THEY
FREQUENTLY COMPRISE ELEMENTS LINKED TO VARIOUS COUNTRIES,
WHETHER BY THE DIFFERENT NATIONALITY OF THE PERPETRATORS AND

THE VICTIMS OR BECAUSE THE PREPARATION AND ACCOMPLISHMENT OF THESE ACTS UNFOLD IN DIFFERENT COUNTRIES.

AMONG THESE ACTS OF VIOLENCE THE TAKING OF HOSTAGES IS INCONTESTABLY INVESTED WITH A PARTICULARLY ODIOS CHARACTER, FOR IT STRIKES AT INNOCENTS. IT REQUIRES, CONSEQUENTLY, A PRIORITY ACTION OF THE INTERNATIONAL COMMUNITY.

2. THE TAKING OF HOSTAGES IS NOT A NEW PROBLEM. IT USED TO APPEAR ESSENTIALLY AS A FORM OF REPRISAL IN TIME OF WAR.

TAKING OF HOSTAGES IN TIME OF WAR WAS NOT CONSIDERED AS CONTRARY TO INTERNATIONAL LAW UNTIL 1919, WHEN THE COMMISSION OF JURISTS ESTABLISHED BY THE CONFERENCE OF PEACE PRELIMINARIES INVESTED THE PUTTING TO DEATH OF HOSTAGES WITH THE CHARACTER OF A WAR CRIME. THIS WAS CONFIRMED BY THE STATUTE OF INTERNATIONAL MILITARY COURTS OF 1945.

SOME YEARS LATER, TAKING OF HOSTAGES ITSELF WAS TOTALLY FORBIDDEN IN THE FOUR HUMANITARIAN CONVENTIONS OF GENEVA OF AUGUST 12, 1949. BY WAY OF EXAMPLE, THE CONVENTION "RELATIVE TO THE PROTECTION OF CIVILIAN PERSONNEL IN TIME OF WAR" CONTAINS A RATHER LARGE SCOPE OF APPLICATION. IT APPLIES FROM THE MOMENT THERE IS A DECLARED WAR OR ANOTHER ARMED CONFLICT BETWEEN TWO STATES EVEN IF THE STATE OF WAR IS NOT RECOGNIZED BY ONE OF THEM. IT ALSO APPLIES TO ALL CASES OF TERRITORIAL OCCUPATION (ARTICLE 2). MOREOVER, ALL ARMED INSURGENCE ON THE TERRITORY OF THE ONE OF THE HIGH CONTRACTING PARTIES (CIVIL WAR) FALLS UNDER THE APPLICATION OF THE CONVENTION. ARTICLE 3 STIPULATES TO THIS END THAT IN ALL CASES, PERSONS WHO DO NOT PARTICIPATE DIRECTLY IN HOSTILITIES CAN NEVER BE TAKEN AS HOSTAGES.

THE GENEVA CONVENTION DECLARED THE TAKING OF HOSTAGES A "GRAVE INFRACTION" AND LIKEWISE A WAR CRIME AND CONTRARY TO INTERNATIONAL LAW.

THE GENEVA CONVENTIONS ONLY APPLY IF THERE IS ARMED CONFLICT AND ARE NOT OF A NATURE TO REGULATE ALL THE CASES OF TAKING OF HOSTAGES. IT IS IMPORTANT CONSEQUENTLY TO AIM AT SITUATIONS THAT, NOT BEING COVERED BY THESE CONVENTIONS, BEAR ON NON-CODIFIED INTERNATIONAL CRIMINAL LAW.

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3. IN THIS RESPECT, THE PROBLEM OF TAKING HOSTAGES DOES IN FACT BEAR ON INTERNATIONAL CRIMINAL LAW, FOR IT IS THE LATTER'S SPECIAL MISSION TO SEE TO IT THAT THE ESSENTIAL VALUES WHICH ARE AT THE VERY BASE OF INTERNATIONAL ORGANIZATION ARE RESPECTED.

THE PERIOD AFTER THE SECOND WORLD WAR SAW THE BIRTH OF INNUMERABLE CONVENTIONS AND DECLARATIONS--OF WHICH THE MOST IMPORTANT UNCONTESTABLY WAS THE UNIVERSAL DECLARATION ON THE RIGHTS OF MAN ON DECEMBER 10, 1948--ALL OF WHICH TENDED TO SANCTIFY THE ESSENTIAL AND INHERENT VALUES FOR ALL HUMANITY (RIGHT TO LIFE AND PHYSICAL INTEGRITY). UNFORTUNATELY, THE UNIVERSAL DECLARATION, LIKE MOST OF THE SIMILAR INTERNATIONAL INSTRUMENTS, LACKS THE SANCTIONS THAT WOULD GIVE IT A GREATER COERCIVE FORCE. AN INTERNATIONAL ACTION ACCOMPANIED BY SANCTIONS

IS INDISPENSABLE MORE ESPECIALLY AS THERE ARE UNCONTESTABLE LACUNAE IN THE NATIONAL LEGISLATIVE ARSENALS, WHETHER BECAUSE THERE IS NOT EXTRADITION TREATY BETWEEN ALL COUNTRIES OR WHETHER BECAUSE CERTAIN NATIONAL LEGISLATION DOES NOT SUFFICIENTLY REPRESS THE CRIMES IN QUESTION. IT WOULD BE NECESSARY FOR STATES, BY MEANS OF AN INTERNATIONAL CONVENTION, TO BE IN A POSITION TO APPLY THE SYSTEM "DEDERE AUT PUNIRE", ALL THE MORE BECAUSE THE PERPETRATORS OF THESE CRIMES CAN, GIVEN THE TRANSPORTATION MEANS THAT EXIST, EASILY TAKE REFUGE IN ONE COUNTRY OR ANOTHER.

4. SUCH A CONVENTION WOULD BE TOTALLY SEPARATE FROM (ETRANGERE A) ALL THE WORK UNDERTAKEN IN THE UN FRAMEWORK, WHETHER UNDER THE HEADING OF TERRORISM OR PROTECTION OF DIPLOMATS. IN FACT, THESE LATTER POINTS UNCONTESTABLY HAVE A POLITICAL DIMENSION, BE IT BECAUSE THE ACTS ENVISAGED HAVE A POLITICAL MOTIVE OR GOAL, OR BE IT THAT THE PROTECTION RESULTS FROM THE FUNCTION OF A POLITICAL CHARACTER THAT THE DIPLOMAT PERFORMS. ON THE OTHER HAND, THE PROBLEM OF TAKING OF HOSTAGES PRESENTS ITSELF AS A PRE-EMINENTLY JURIDICAL PROBLEM, GOING BEYOND THE POSSIBILITY OF EACH NATIONAL STATE BECAUSE OF ITS INTERNATIONAL CHARACTER.

IT IS, IN FACT, A MATTER OF DECLARING, BY A CODIFICATION AT THE UNITED NATIONS, THAT THE TAKING OF HOSTAGES IN ALL ITS FORMS IS AN "INTERNATIONAL INFRACTION" CONTRARY TO INTERNATIONAL LAW AND, IN THIS WAY, A MATTER OF CODIFYING A CONVICTION EXISTING IN THE STATES. THUS WOULD BE COMPLETED THE HUMANITARIAN CONVENTIONS OF GENEVA AND THE RECENT CONVENTION ON THE REPRESSION OF THE ILLEGAL CAPTURE OF AIRCRAFT (THE HAGUE, CONFIDENTIAL

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DECEMBER 16, 1970), WHICH HAVE ALREADY REGULATED CERTAIN ASPECTS OF THE TAKING OF HOSTAGES.

5. THE FORM THAT THIS CODIFICATION WOULD TAKE AND ITS DRAFTING RELATE TO A COMMITTEE OF A JURIDICAL CHARACTER. THE BELGIAN GOVERNMENT JUDGES, CONSEQUENTLY, THAT THE QUESTION SHOULD BE SENT FOR EXAMINATION TO THE INTERNATIONAL LAW COMMISSION.

IT IS FOR THIS REASON THAT THE BELGIAN GOVERNMENT TABLES A DRAFT RESOLUTION INVITING THE GENERAL ASSEMBLY TO RECOMMEND TO THE INTERNATIONAL LAW COMMISSION THAT IT INSCRIBE TAKING OF HOSTAGES AMONG THE PRIORITY ITEMS OF ITS AGENDA AND THAT IT MAKE A REPORT ON THIS SUBJECT TO THE 29TH SESSION OF THE GENERAL ASSEMBLY.

END TEXT

COMMENT:THE FOREIGN OFFICE HAS ASSURED US THAT NO FURTHER ACTION ON THIS MATTER IS PLANNED UNTIL AFTER THE TALKS WITH AMBASSADOR SCHAUFELLE SCHEDULED TO BEGIN AT NOON ON AUGUST 1. WOULD APPRECIATE ANY FURTHER GUIDANCE OR COMMENTS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 10 MAY 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 30 JUL 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: kelleyw0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973BRUSSE04362
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: 11652 GDS
Errors: n/a
Film Number: n/a
From: BRUSSELS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730768/abqceeij.tel
Line Count: 164
Locator: TEXT ON-LINE
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: BRUSSELS 4173, 4183, 4239; USUN 2666
Review Action: RELEASED, APPROVED
Review Authority: kelleyw0
Review Comment: n/a
Review Content Flags:
Review Date: 06 SEP 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <06-Sep-2001 by smithrj>; APPROVED <23-Oct-2001 by kelleyw0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status:
Subject: BELGIAN PROPOSAL ON TAKING OF HOSTAGES
TAGS: PFOR, PINS, BE, UN
To: STATE INFO USUN N Y
HELSINKI
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005